

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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In Re:

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Date:  
July 27, 2009

### LEGEND:

Taxpayer =  
Acquiring =  
Merger Subsidiary =  
Subsidiary =  
Date a =  
Date b =  
Date c =

Dear :

This letter is in response to letters dated March 6, 2009, and June 30, 2009, submitted by your authorized representatives, requesting a ruling under section 162(m) of the Internal Revenue Code (Code). Specifically, Taxpayer requested a ruling that Taxpayer's officers are not covered employees for the short taxable year ending on Date b for purposes of section 162(m). The facts, as represented, are as follows.

On Date a, Taxpayer entered into a merger agreement with Acquiring and Merger Subsidiary. Merger Subsidiary was an indirect wholly-owned subsidiary of Acquiring. Pursuant to the merger agreement, Merger Subsidiary merged with and into Taxpayer, which was the surviving corporation. Before the merger, Acquiring created Subsidiary, a wholly-owned subsidiary of Acquiring. On Date b, Taxpayer merged with and into Subsidiary, which was the surviving corporation.

The Taxpayer represents that pursuant to the executive compensation disclosure rules under the Securities Exchange Act of 1934 (Exchange Act), Taxpayer was not required to disclose compensation of its officers for the fiscal year ending on Date c, or for any portion of such year.

Section 162(a)(1) of the Code allows a deduction for all of the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business,

including a reasonable allowance for salaries or other compensation for personal services actually rendered.

Section 162(m)(1) of the Code provides that for any publicly held corporation no deduction shall be allowed for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year exceeds \$1 million.

Section 162(m)(2) of the Code defines publicly held corporation to mean any corporation issuing any class of common equity securities required to be registered under section 12 of the Exchange Act.

Section 162(m)(3) of the Code defines covered employee as any employee of the taxpayer if (A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such capacity, or (B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the four highest compensated officers for the taxable year (other than the chief executive officer).

Section 1.162-27(c)(2) of the Income Tax Regulations provides that a covered employee means any individual who, on the last day of the taxable year, is (A) the chief executive officer of the corporation or is acting in such capacity; or (B) among the four highest compensated officers (other than the chief executive officer). Whether an individual is the chief executive officer or one of the four highest compensated officers is determined pursuant to the executive compensation disclosure rules under the Exchange Act. The executive compensation disclosure rules are contained in Item 402 of Regulation S-K, 17 CFR 229.402. These rules require disclosure of compensation awarded to, earned by, or paid to certain executive officers.

Pursuant to Notice 2007-49, 2007-1 C.B. 1429, effective for taxable years ending on or after December 15, 2006, the Service interprets the term "covered employee" for purposes of § 162(m) to mean any employee of the taxpayer if, as of the close of the taxable year, such employee is the principal executive officer (within the meaning of the disclosure rules) of the taxpayer or an individual acting in such a capacity, or if the total compensation of such employee for that taxable year is required to be reported to shareholders under the Exchange Act by reason of such employee being among the three highest compensated officers for the taxable year (other than the principal executive officer or the principal financial officer).

Therefore, based solely on the facts presented, we rule as follows:

For purposes of section 162(m) of the Code, Taxpayer's officers are not covered employees for Taxpayer's taxable year ending on Date b.

Except as expressly provided herein, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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John B. Richards  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of Division Counsel /  
Associate Chief Counsel /  
Tax Exempt & Government Entities